

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Brunswick Division

FILED

2011 APR -7 PM 2:58

U.S. BANKRUPTCY COURT  
BRUNSWICK, GA  
SAMUEL L. KAY, CLERK

IN RE:	)	Chapter 7 Case
MARVIN B. SMITH III	)	Number <u>07-20244</u>
SHARON H. SMITH	)	
	)	
Debtors	)	

**REPORT AND RECOMMENDATION TO THE UNITED STATES DISTRICT COURT**  
**ON APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL OF**  
**ORDER DISMISSING DEBTORS' MOTION**  
**TO RECONSIDER CLAIMS OF ATLANTIC SOUTHERN BANK**

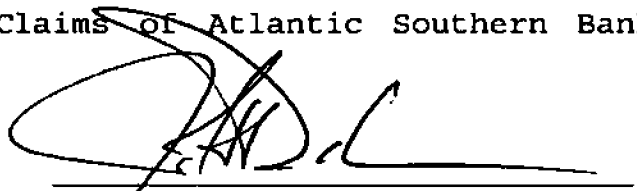
This report and recommendation is directed to the United States District Court for the Southern District of Georgia, because the statutory requirement of certification has not been satisfied for direct appeal to the United States Court of Appeals for the Eleventh Circuit. See 28 U.S.C. § 158(d)(2)(A); Fed. R. Bankr. P. 8001(f).

Debtors Marvin B. Smith III and Sharon H. Smith timely filed a notice of appeal of the Order Dismissing Debtors' Motion to Reconsider Claims of Atlantic Southern Bank (ECF No. 414) and an Application to Proceed in District Court Without Prepaying Fees or Costs ("IFP Application") (ECF No. 415). On March 7, 2011, the Smiths filed an Amended Notice of Appeal stating that the appeal was being taken to the Eleventh Circuit. (ECF No. 421.) On March 14, the Clerk's office issued a Notice of

Defective Appeal requiring either a Certification to Court of Appeals signed by all parties or a Request for Certification for Direct Appeal to Court of Appeals. (ECF No. 428.) The Smiths did not cure the deficiency, but instead filed a Reply to Notice of Defective Appeal, in which they stated their belief that certification was not required. (ECF No. 440.)

"Until the appeal is duly certified, it is handled as an appeal to the district court." In re Grau, No. 09-32460-C, 2010 WL 2232833, at \*2 (Bankr. W.D. Tex. June 2, 2010). The Clerk of the Bankruptcy Court is therefore directed to treat this matter as an appeal to the District Court, including the transmission of this report and recommendation.

The Smiths having complied with the requirements of 28 U.S.C. § 1915 setting out the standard for proceeding in forma pauperis, it is my recommendation that the District Court enter an order authorizing the Smiths to proceed in forma pauperis with their appeal to the District Court of the Order Dismissing Debtors' Motion to Reconsider Claims of Atlantic Southern Bank entered on March 3, 2011.

  
JOHN S. DALIS  
United States Bankruptcy Judge

Dated at Brunswick, Georgia,  
this 17 day of April, 2011.